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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

'98 DEC -7 P2:50

IN THE MATTER OF:

R.I. Busse, Inc.
Elk Grove Village, Illinois

Respondent.

)
)
) Docket No. CAA-5-99-002
)
) Proceeding to Assess
) Administrative Penalty
) under Section 113(d) of the
) Clean Air Act,
) 42 U.S.C. § 7413(d)

ADMINISTRATIVE COMPLAINT

This is an action for the assessment of a civil administrative penalty brought pursuant to Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d), and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits" (Consolidated Rules), 40 C.F.R. Part 22, against Respondent R.I. Busse, Inc. (Busse) for violations of Section 111 of the CAA, 42 U.S.C. § 7411, and regulations promulgated thereunder, setting forth the New Source Performance Standards.

The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA), Chicago, Illinois.

STATUTORY AND REGULATORY BACKGROUND

1. The U.S. EPA promulgated the New Source Performance Standards (NSPS), 40 C.F.R. Part 60, Subpart A (General

Provisions), specifically 40 C.F.R. § 60.11, on October 15, 1973, 38 Fed.Reg. 28565, amended at 39 Fed.Reg. 39873, November 12, 1974; 43 Fed.Reg. 8800, March 3, 1978; 45 Fed.Reg. 23379, April 4, 1980; 48 Fed.Reg. 48335, October 18, 1983; 50 Fed.Reg. 53113, December 27, 1985; 51 Fed.Reg. 1790, January 15, 1986; 52 Fed.Reg. 9781, March 26, 1987.

2. NSPS Subpart A, 40 C.F.R. § 60.11(d), states that at all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.
3. U.S. EPA promulgated NSPS Subpart OOO, Standards of Performance for Nonmetallic Mineral Processing Plants, on August 1, 1985, 51 Fed.Reg. 31337, amended at 54 Fed.Reg. 6680, February 14, 1989.
4. NSPS Subpart OOO, 40 C.F.R. § 60.672(c), states that on and after the sixtieth day after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup, no owner or operator shall cause to be discharged into the atmosphere from any crusher, at which a capture system is not used, fugitive emissions greater than 15 percent

opacity.

5. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), provides, among other things, that the Administrator may, upon finding that a person has violated a requirement of the CAA, issue an administrative penalty order assessing a civil penalty of up to \$27,500 per day of violation, up to a maximum administrative civil penalty of \$220,000, adjusted for inflation in accordance with the Debt Collection Improvement Act of 1998 ("DCIA"), 31 U.S.C. § 3701.

GENERAL ALLEGATIONS

6. Paragraphs 1-5 are incorporated herein by reference.
7. The Respondent in this proceeding is Busse.
8. Respondent is an Illinois corporation with a place of business located at 1520 Midway Court, Elk Grove Village, Illinois.
9. Respondent is doing business in the State of Illinois.
10. The term "person", as that term is defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e), includes a corporation.
11. Respondent is a "person" as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).
12. The term "nonmetallic mineral processing plant" is defined at 40 C.F.R. § 60.671 as "any combination of equipment that is used to crush or grind any nonmetallic mineral wherever located."

13. The term "nonmetallic mineral" is defined at 40 C.F.R. § 60.671 to include, among other things, crushed and broken stone.
14. Respondent owns or operates a "nonmetallic mineral processing plant", as that term is defined at 40 C.F.R. § 60.671, located at 1520 Midway Court, Elk Grove Village, Illinois.
15. Respondent's plant produces crushed rock product, a "nonmetallic mineral" as defined at 40 C.F.R. § 60.671.
16. Busse's Elk Grove Village plant contains a primary and a secondary rock crusher, a screen, and associated conveyor belts. The primary and secondary crushers and screen are equipped with water sprays for the purpose of fugitive dust suppression.
17. On July 23, 1998, and July 27, 1998, Busse was operating the primary crusher.
18. The primary crusher is an affected facility subject to the requirements of 40 C.F.R. § 60.11(d).
19. Fugitive dust emissions from the primary crusher are subject to the opacity emission limits set forth at 40 C.F.R. § 60.672(c).
20. On September 1, 1998, the Administrator issued to Busse a Finding of Violation (FOV) pursuant to Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), for the alleged violations

described in Counts I and II below.

21. On September 1, 1998, the Administrator notified the State of Illinois that Busse had allegedly violated the requirements of the CAA as set forth in Counts I and II, below.
22. On October 14, 1998, representatives of Respondent and U.S. EPA met to discuss the violations alleged in the FOV.

COUNT I

23. Paragraphs 1 through 22 of this Administrative Complaint are hereby incorporated by reference as if fully set forth in this paragraph.
24. On July 23, 1998, and July 27, 1998, an inspector from U.S. EPA performed visible emissions observations, in accordance with 40 C.F.R. Part 60, Appendix A, Method 9, on emissions from the primary crusher at Busse's Elk Grove Village facility.
25. On July 23, 1998, the U.S. EPA inspector observed visible emissions from Busse's primary crusher that exceeded 15 percent opacity for at least one six minute average, as summarized below:

<u>Time</u>	<u>6-Minute Average Opacity Observed</u>
11:33-11:39 AM	31.4%
11:39-11:45 AM	29.8%

26. On July 27, 1998, the U.S. EPA inspector observed visible emissions from Busse's primary crusher that exceeded 15

percent opacity for at least one six minute average, as summarized below:

<u>Time</u>	<u>6-Minute Average Opacity Observed</u>
9:45- 9:51 AM	27.1%
9:57-10:03 AM	15.8%
10:03-10:09 AM	19.6%
10:09-10:15 AM	17.3%

27. The U.S. EPA reviewed the above-referenced visible emissions observations and determined that Busse's emissions from the primary crusher exceeded the fifteen percent opacity limit set forth at 40 C.F.R. § 60.672(c) for at least one six-minute average on each of the above-mentioned dates.
28. Busse's opacity exceedances, as described in Paragraphs 25 and 26, above, constitute violations of 40 C.F.R. § 60.672(c).
29. Each of Busse's violations of 40 C.F.R. § 60.672(c) constitutes a violation of the NSPS Subpart 000.
30. Each of Busse's violations of NSPS Subpart 000 is a violation of Section 111 of the CAA, 42 U.S.C. § 7411.
31. Each of Busse's violations of Section 111 of the CAA, 42 U.S.C. § 7411, subjects Busse to the assessment of a civil penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

COUNT II

32. Paragraphs 1 through 31 of this Administrative Complaint are hereby incorporated by reference as if fully set forth in

this paragraph.

33. On July 23, 1998, Busse represented to the U.S. EPA inspector that one hose to the primary crusher water spray at Busse's plant was pinched off at the time of the U.S. EPA inspection.
34. On July 27, 1998, the primary crusher water spray at Busse's plant was fully functioning.
35. In spite of the fully functioning water spray referenced in Paragraph 34 above, the U.S. EPA inspector, on July 27, 1998, observed emissions from Busse's primary crusher in excess of the fifteen percent opacity limit.
36. On July 23, 1998, and July 27, 1998, the primary crusher and water spray at the primary crusher at Busse's plant were not being operated in a manner consistent with good air pollution control practices for minimizing emissions.
37. Failure to operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions constitutes a violation of 40 C.F.R. § 60.11(d)
38. Each of Busse's violations of 40 C.F.R. § 60.11(d) constitutes a violation of the NSPS Subpart A.
39. Each of Busse's violations of NSPS Subpart A is a violation of Section 111 of the CAA, 42 U.S.C. § 7411.

40. Each of Busse's violations of Section 111 of the CAA, 42 U.S.C. § 7411, subjects Busse to the assessment of a civil penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

41. Pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), the Administrator of U.S. EPA may assess a civil penalty not to exceed \$25,000 per day up to a total of \$200,000 for each violation of the NSPS. In accordance with the Debt Collection Improvement Act, 31 U.S.C. § 3701, and the Civil Monetary Penalty Inflation Rule, published at 40 C.F.R. Part 19, U.S. EPA is authorized to increase penalties for violations occurring or continuing on or after January 31, 1997, by 10%. U.S. EPA is therefore authorized to assess a civil penalty of up to \$27,500 per day of violation, up to a maximum administrative civil penalty of \$220,000.
42. Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), requires the Administrator to take the following factors into consideration when determining the amount of any penalty to be assessed under Section 113: the size of Respondent's business; the economic impact of the proposed penalty on Respondent's business; Respondent's full compliance history and good faith efforts to comply; the

duration of the violations alleged in the Complaint as established by any credible evidence; payment by Respondent of penalties previously assessed for the same violations; the economic benefit of noncompliance; the seriousness of the violations; and such other factors as justice may require.

43. Based upon the facts alleged in this Complaint and after consideration of the factors discussed above as they relate to Respondent and to the facts and circumstances of Respondent's violations, U.S. EPA hereby proposes to issue to Respondent a Final Order Assessing Administrative Civil Penalties in the amount of \$55,000. This proposed penalty has been calculated in accordance with Section 113(e)(1) of the CAA. In developing the penalty proposed in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy ("Penalty Policy"), a copy of which is enclosed with this Complaint.
44. The CAA requires that, when determining an appropriate penalty, U.S. EPA must consider the economic benefit a violator derives from the alleged violations. The penalty must be sufficient to preclude the violator from deriving monetary benefit due to its having avoided or delayed

expenditures that would have insured compliance with the CAA, both for deterrence purposes and because other regulated entities have incurred similar expenses in maintaining compliance with the CAA. In this case, there is minimal economic benefit, and the U.S. EPA in its discretion has decided not to seek economic benefit.

45. In accordance with the CAA, U.S. EPA has considered the seriousness of Respondent's violations. One factor reflecting the seriousness of the violations is the amount of the pollutant emitted as a result of the violation. Thus the highest detected violation, 31.4 percent opacity, has been compared with the standard, 15 percent opacity. Accordingly, the proposed penalty includes a component corresponding to the actual or potential environmental harm from the violations.
46. In considering the seriousness of the violation, U.S. EPA also considered the air quality status of the area in which the Respondent's facility is located. Respondent's facility is located in a portion of Cook County which is classified as "in attainment" with regard to the old Total Suspended Particulates standard and is considered unclassifiable for particulate matter smaller than 10 microns, which is treated in the same manner as an attainment area for regulatory purposes (40 C.F.R. § 81.314). Accordingly, the proposed

penalty includes a component corresponding to the actual or potential harm from a violation in an attainment area for particulate matter.

47. In accordance with the CAA, U.S. EPA has considered the duration of the violations in assessing the actual or possible harm resulting from such violations. The violations occurred on July 23, 1998, and July 27, 1998. Thus, the penalty has been based on duration of violation of two days for each violation as described in Counts I and II.
48. In considering the seriousness of the violation, U.S. EPA also considered the importance of good air pollution control practices to achieving the goals of the Clean Air Act and its implementing regulations. Accordingly, the proposed penalty includes a component corresponding to the importance of these violations to the regulatory scheme.
49. In accordance with the CAA, U.S. EPA has considered the size of Respondent's business in determining the appropriate penalty. From a report prepared by the Dun & Bradstreet financial information service on August 13, 1998, Respondent's net worth is unknown. Busse has provided to the U.S. EPA a figure for its net worth, and the component of the proposed penalty which is based on the size of Respondent's business has been calculated according to the Penalty Policy, based on Busse's representation of its net

worth.

50. In determining an appropriate civil penalty in accordance with the CAA, U.S. EPA has considered Respondent's compliance history and its good faith efforts to comply. Because U.S. EPA is aware of no prior citations for violations of environmental statutes by Respondent, the proposed penalty has not been increased based on this factor.
51. In accordance with the CAA, U.S. EPA has considered the economic impact of the penalty on Respondent's business. Based on the best information available to U.S. EPA at this time, including the August 13, 1998, Dun & Bradstreet report, the proposed penalty of \$55,000 reflects a current presumption of Respondent's ability to pay the penalty and to continue in business.
52. The penalty proposed in this Complaint has been developed based on the best information available to U.S. EPA at this time, and may be adjusted if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriateness of the penalty.
53. Respondent shall pay the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and shall deliver it, with a transmittal letter identifying the name of the case and docket number of this

Complaint to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

Respondent shall also include on the check the name of the case and the docket number. Respondent simultaneously shall send copies of the check and transmittal letter to:

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

and

Kevin Chow, (C-14J)
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

OPPORTUNITY TO REQUEST A HEARING

54. Section 113(d)(2) of the CAA, 42 U.S.C. § 7413(d)(2), requires the Administrator of U.S. EPA to provide to any person against whom the Administrator proposes to assess a penalty an opportunity to request a hearing on the proposed penalty. Accordingly, Busse has the right to request a hearing to contest any material fact alleged in the Complaint or to contest the appropriateness of the amount of the proposed penalty. In order to request a hearing, Busse must specifically make such request in Busse's Answer, as

discussed in Paragraphs 55 through 60, below. Any hearing which Busse requests regarding the Complaint will be held and conducted in accordance with the provisions of the Consolidated Rules.

ANSWER

55. To avoid being found in default, Busse must file a written Answer to this Complaint with the Regional Hearing Clerk, (R-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, within thirty (30) calendar days of Busse's receipt of this Complaint. In computing any period of time allowed under this Complaint, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays and Federal holidays shall be included, except when a time period expires on such, in which case the deadline shall be extended to the next business day.
56. Busse's Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint, or must state clearly that Busse has no knowledge regarding a particular factual allegation which Busse cannot admit, deny or explain, in which case the allegation will be deemed denied.
57. Busse's Answer shall also state with specificity:
 - a. The circumstances or arguments which Busse alleges constitute grounds for defense;

- b. The facts that Busse intends to place at issue; and
 - c. Whether Busse requests a hearing as discussed in paragraph 54 above.
58. Busse's failure to admit, deny or explain any material factual allegation in the Administrative Complaint will constitute an admission of the allegation. Busse should further note that the Administrator's Rules provide that any hearing that shall be held will be a "hearing upon the issues raised by the complaint and answer."
59. Busse must send a copy of the Answer and of any documents subsequently filed in this action to Kevin Chow, Assistant Regional Counsel (C-14J), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. Busse may telephone Mr. Chow at (312) 353-6181.
60. If Busse fails to file a written Answer within thirty (30) calendar days of Busse's receipt of this Complaint, the Administrator of U.S. EPA may issue a Default Order pursuant to 40 C.F.R. § 22.17(a). Issuance of a Default Order will constitute a binding admission of all allegations made in the Complaint and a waiver of Busse's right to a hearing. The civil penalty proposed herein shall become due and payable without further proceedings sixty (60) days after the Default Order becomes the Final Order of the Administrator pursuant to 40 C.F.R. § 22.27 or § 22.31.

SETTLEMENT CONFERENCE

61. Whether or not Busse requests a hearing, Busse may request an informal conference to discuss the facts of this action and to arrive at a settlement. To request a settlement conference, write to Bonnie Bush, Air Enforcement and Compliance Assurance Branch (AE-17J), Air and Radiation Division, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, or telephone Ms. Bush at (312) 353-6684.
62. Busse's request for an informal settlement conference does not extend the thirty (30) calendar day period during which Busse must submit a written Answer to this Complaint. Busse may pursue simultaneously the informal settlement conference and adjudicatory hearing processes. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. However, U.S. EPA will not reduce the penalty simply because such a conference is held. Any settlement that may be reached as a result of such a conference shall be embodied in a Consent Order. Busse's agreement to a Consent Order issued pursuant to 40 C.F.R. § 22.27 shall constitute a waiver of Busse's right to request a hearing on any matter stipulated to therein.

CONTINUING OBLIGATION TO COMPLY

63. Neither assessment nor payment of an administrative civil penalty shall affect Busse's continuing obligation to comply with the CAA or any other Federal, State or local law or regulation.

12/4/98

Date



Stephen Rothblatt, Acting Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

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CERTIFICATE OF SERVICE

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I hereby certify that today I filed the original of this Complaint and Notice of Opportunity for Hearing in the office of the Regional Hearing Clerk (E-19J) ^{US} United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. _{REGION V}

I then caused a duplicate original of the filed document and the Part 22 Rules of Practice to be mailed on December 7, 1998 via Certified Mail, Return Receipt Requested, to the following Respondents:

Carl Busse, President
R.I. Busse, Inc.
1520 Midway Court
Elk Grove Village, Illinois 60007


with copies to:

Raymond T. Reott, Esq.
Jenner and Block
One IBM Plaza
Chicago, Illinois 60604-3590

David Kolaz, Manager
Compliance and Systems Management Section
Bureau of Air
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62702

Mel Villalobos, Regional Manager
Region 1
Illinois Environmental Protection Agency
1701 First Avenue - Suite 600
Maywood, Illinois 60153

on the 7th day of December 1998


Betty Williams, Secretary
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: P140894267